# In the Supreme Court of the United States

OCTOBER TERM, 1955

---

No. 423

RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG; and C. A. MCDOUGALL, Sheriff, Fremont County, PETITIONERS

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

### OPINION BELOW

The opinion of the Court of Appeals is reported at 224 F. 2d 177, and appears also at Pet. App. 17-22.

### JURISDICTION

The judgment of the Court of Appeals was entered on June 29, 1955. The petition for a writ of

certiorari was filed on September 26, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether permanent improvements, erected by an Indian upon land held in fee by the United States in trust for the Indian, become part of the trust land and are thus immune from the imposition of mechanics' liens under state law and from sale to satisfy such liens.

STATUTE INVOLVED

Section 5 of the General Allotment Act of February 8, 1887, 24 Stat. 388, 389, 25 U.S.C. 348, provides in part as follows:

> Upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever:

> *Provided,* That the President of the United States may in any case in his discretion extend the period. *And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void:* * * *. [Italics supplied.]

STATEMENT

The facts in this case were stipulated and are set out in the decision of the court of appeals (Pet. 17-19). On January 6, 1908, certain land in Wyoming was allotted to an Indian, Kate S. Breaker, under section 5 of the General Allotment Act of February 8, 1887, *supra.* As required by the Act the patent provided that the United States hold title in trust for the Indian for a period of twenty-five years, and the trust period has been extended by Executive Orders to 1968, as authorized by the Act. On June 12, 1950, the land was conveyed by the heirs of the allottee, with approval of the Secretary of the Interior, to another Indian allottee, by a deed which preserved the status of the land as held in fee by the United States.

In September, 1951, Esther Chamberlin contracted with Ernest Grider, d/b/a U.S. Construction Company, for the erection of a dwelling house on the trust property. The petitioners, other than C. A. McDougall, furnished labor and materials in the construction of the house and filed notice

of claim of liens upon the improvements. Esther Chamberlin paid to Ernest Grider $18,714.00 in full satisfaction of her indebtedness for the house, such payment being out of her unrestricted funds. The four petitioners who had filed mechanics' liens, not having been paid off by Grider, filed suits against the Indian in the District Court of Fremont County, Wyoming, seeking enforcement of the liens, and on September 23, 1953, judgment was entered against the Indian for an aggregate amount of $4,968.49, with interest at 7%. The judgment declared liens for such amount. The state court judgment provided as follows:

> 2. That the plaintiffs are entitled to a lien upon the dwelling house building and improvements placed upon said real property under the contract with Ernest Grider, * * *, but that said plaintiffs are not entitled to a lien upon one acre or any of the said real property hereinabove described.

The judgment entered in those cases further appointed the Sheriff of Fremont County, Wyoming, to sell the improvements to satisfy the liens as declared.

The United States was not a party to and did not participate in those actions. Thereafter, on December 10, 1953, the United States brought the instant action against the lienors and C. A. McDougall, Sheriff of Fremont County. The complaint alleged that the United States holds legal title to the land and improvements, was not a party

to the state court litigation, and has not consented to such a suit. The complaint prayed that the liens be set aside, that the Government's title be quieted against any claims of the defendants, and that they be enjoined from levying execution, selling, or removing the improvements.

The cause was submitted to the district court which concluded that the state court judgments were valid and that the Government's application for injunctive relief should be denied. Upon appeal, the court of appeals reversed upon the authority of this Court's decision in *United States* v. *Rickert,* 188 U.S. 432.

## ARGUMENT

The court of appeals correctly held that the case is governed by the decision in *United States* v. *Rickert, supra.* There the question was whether a lien for state taxes could attach to permanent improvements erected by Indians upon lands held, as is the land in this case, in trust by the United States and whether such improvements could be sold to satisfy such a lien. This Court held that the improvements became part of the realty, enjoyed the same immunity, and that the "object [of Congress in making the allotments] would be defeated if the improvements could be assessed and sold for taxes" (188 U.S. at p. 442).

The circumstance that this case involves an attempt to impose mechanics' liens, rather than tax liens, is irrelevant. As the court of appeals put it (Pet. App. 22), "The results that would flow

from the taxation of improvements upon land held in trust by the United States and the sale of such improvements for taxes would likewise flow from the imposition of mechanics' liens upon lands held in trust by the United States and the sale of such improvements to satisfy such liens, and would frustrate the declared policy of the United States with respect to such lands."

Petitioner purports to distinguish the *Rickert* case (Pet. 9-10) by asserting that there the improvements were admitted to be a part of the realty held in trust. The holding to this effect was not put by this Court on the ground of admissions, but as a matter of federal law (188 U.S. at 442). Moreover it is not true that the improvements were admitted to be part of the realty. Respondent in the *Rickert* case argued that the improvements were personalty by virtue of a state law which undertook to declare them personalty (Rickerts' brief, pp. 7-9). This Court flatly rejected the argument that state law could intervene to frustrate the federal policy underlying the making of the allotments in trust (188 U.S. at 442), and this establishes the irrelevancy of Wyoming law relied upon by petitioner (Pet. 7-8).

The suggestion of conflict (Pet. 10-11) between the decision of the court of appeals and the decisions in *McCurdy* v. *United States,* 246 U.S. 263, and *Williams* v. *First National Bank,* 216 U. S. 582, is baseless. The court of appeals was so unimpressed with the relevancy of those cases that it made no mention of them, although

they were relied upon by the petitioners. And it is enough to say of them here that they dealt with matters far afield and wholly unrelated to the question in this case, and in no way purported to overrule or limit the *Rickert* decision.

### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
*Solicitor General.*
PERRY W. MORTON,
*Assistant Attorney General.*
ROGER P. MARQUIS,
FRED W. SMITH,
*Attorneys.*

OCTOBER, 1955

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 383402 470